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**(2014) 09 KL CK 0188**  
**In the High Court Of Kerala**  
**Case No : Writ Appeal No. 1277 of 2013**

The Tahsildar

APPELLANT

Vs

Soman Peter

RESPONDENT

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**Date of Decision :** 18-09-2014

**Acts Referred:**

Kerala Building Tax Act, 1975 — Section 2(e), 5, 5(6)

**Citation :** (2014) 4 ILR 327 : (2014) 4 KHC 154 : (2014) 4 KLJ 17 : (2015) 1 RCR(Rent) 221

**Hon'ble Judges :** P.D. Rajan, J;K.T. Sankaran, J

**Bench :** Division Bench

**Advocate :** Sebastian Champapally, Spl. GP, Advocate for the Appellant; Joseph Markose, Sr. Advocate and V. Abraham Markos, Advocate for the Respondent

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## Judgement

K.T. Sankaran, J.—The petitioner was the owner of an extent of nine cents of land in Ernakulam Village in Kanayannur Taluk. There was an old residential building and a commercial building in the property. The petitioner decided to demolish those buildings and to construct a building for commercial as well as residential purposes. The petitioner executed Exts. P1 and P2 settlement deeds in favour of his wife and son respectively on 21.10.2004 by which the wife and son of the petitioner became fractional owners of the property. They jointly applied for a loan from the Housing Development Finance Corporation and Ext. P3 agreement dated 16.11.2004 was executed for getting a loan of Rs. 25 lakhs. They constructed a building consisting of three floors in the property. Even in Exts. P1 and P2 settlement deeds executed by the petitioner in favour of his wife and son respectively, it is mentioned that a building consisting of three floors was proposed to be constructed retaining the ownership of the first floor with the petitioner, ownership of the second floor with his wife and the ownership of the third floor with his son. The petitioner, his wife and son took additional loans from the Housing Development Finance Corporation as per Exts. P4 and P5 agreements. The construction of the building was completed and the Corporation of Cochin assessed the building for the purpose of property tax in the names of

the petitioner, his wife and son with respect to each floor and property tax was assessed accordingly.

2. However, building tax was assessed under the Kerala Building Tax Act, 1975 treating the building as a single unit, as per Ext. P9 assessment order dated 5.8.2006. The petitioner challenged the same in appeal. The Appellate Authority dismissed the appeal as per Ext. P10 order dated 14.7.2009 and that order was confirmed in revision as per Ext. P14 revisional order dated 1.12.2010. The petitioner challenged Exts. P9, P10 and P14 orders in W.P.(C) No. 8136 of 2011. The learned single Judge, by the judgment under challenge in this Writ Appeal, allowed the Writ Petition and quashed Exts. P9, P10 and P14 orders and directed the assessing authority (Tahsildar) to pass fresh assessment orders, treating each one of the units in the building as a separate one and giving the petitioner the benefit of Explanation 2 to Section 2(e) of the Kerala Building Tax Act. This Writ Appeal is filed by the Tahsildar and the District Collector challenging the judgment of the learned single Judge.

3. As per the charging Section, viz., Section 5, the building tax shall be payable by the owner of the building, as provided under Section 5(6) of the Kerala Building Tax Act. In the present case, the petitioner alone is not the owner of the building, but the owners of the building are the petitioner, his wife and son. Section 2(e) of the Kerala Building Tax Act defines "building". Explanation 2 to Section 2(e) provides that where a building consists of different apartments or flats owned by different persons and the cost of construction of the building was met by all such persons jointly, each such apartment or flat shall be deemed to be a separate building. If so, building tax should be assessed with respect to each floor of the building, since each floor would constitute a building within the definition of Section 2(e).

4. The learned Special Government Pleader (Taxes) submitted that there is no evidence to show that the cost of construction was shared equally by the petitioner, his wife and son. There is no such requirement under Explanation 2 to Section 2(e). The question of sharing the expenses equally or otherwise is a matter between the petitioner, his wife and son. The only legal requirements are: (a) that the building consists of different apartments or flats; (b) that they are owned by different persons; and (c) that the cost of construction of the building was met by all such persons jointly. The law makers used the expression jointly and not equally. The different apartments or flats in a building need not consist of equal plinth area or amenities; the cost of construction of the different flats or apartments may be different; and the sharing of the cost of construction by all the owners need not necessarily be equally. When property tax or building tax is levied, it need not be equal in respect of all the apartments or flats in the building. Tax would be levied depending on the plinth area and other factors in respect of each apartment or flat in the building. The contention put forward by the appellants in this regard is unsustainable, going by the plain language of Explanation 2 to Section 2(e) of the Act.

5. The learned Special Government Pleader (Taxes) also submitted that the building permit was obtained in the name of the petitioner and therefore, he shall be deemed to be the owner. The building permit was issued by the Corporation of Cochin. The Corporation of Cochin recognized the petitioner, his wife and son as owners of the three floors of the building as independent units and assessed the property tax accordingly. Therefore, the assessing authority could not take a stand different from the stand taken by the Corporation of Cochin while assessing the property tax.

6. It is submitted by the learned Special Government Pleader (Taxes) that Exts. P4 and P5 would show that loans of Rupees seven lakhs and Rupees ten lakhs respectively were granted to the petitioner, his wife and son after the construction of the building was completed. Construction of the building for the purpose of numbering the same is quite different from completion of the construction for the purpose of occupation or for residence. Several additional expenditure may be required for finishing the house as per the requirements of the owners or occupiers for which additional funds may be required. If loans were taken subsequently, that is not a ground to hold that amounts were not spent jointly by the petitioner, his wife and son. On the other hand, Exts. P4 and P5 would indicate that the expenses for such works, if any, were also shared by all of them.

7. The learned senior counsel appearing for the writ petitioner submitted that pursuant to the judgment passed by the learned single Judge, fresh assessment was made in the name of the petitioner, his wife and son on 20.5.2013 and the Writ Appeal was filed thereafter. The writ petitioner, his wife and son also paid the amounts as per the assessment.

The learned single Judge rightly held that the assessment order and the appellate and revisional orders are bad in law. No interference is called for in this Writ Appeal. The Writ Appeal is, accordingly, dismissed.